1952. **File No.** O. Prev. of Corruption/52

P 5F Legal Deptt.

A **BRANCH**

Subject:— Opinions under the (Indian) Prevention of Corruption Act 1947

O. Prev: of Corrupt./52

File No.

Gen. 194 e.

339-A

C O N T E N T S.

Legal Department File No. C.rev. of Corrupt. / 52

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The proviso to section 3 of the Prevention of Corruption Act. 1947. is in the nature of a safeguard against ill-conceived investigation against a public servant. Therefore the Magistrate who gives the necessary sanction has to be satisfied that such an order ought to be passed. In this case when the investigating officer sought an order from the Magistrate, all that was placed before the Magistrate was a report from the Inspector, who wanted to investigate, and that report was sent with a jamadar who could not be expected to enlighten the Magistrate on any point. It was therefore not unusual for the Magistrate to ask the Inspector himself to see him. If inspite of that the Inspector chooses to send another subordinate, the Magistrate may have thought that the Inspector was avoiding to appear and that may have led him to insist on his appearance. The reason given by the Inspector for not accepting the Magistrate inspite of being asked does not appear satisfactory. In the circumstances this is not a case which need be reported to the High Court.

Sd/-J.R.Dhurandhar.

4-1

O.C. Remembrancer of Legal Affairs.

U.O. to K.D.Bo. S-Confl. dated the 5th January 1952.

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There is no contradiction as presumed by the District Magistrate, Kolhapur in R.L.A.'s No. 9263, dated 16th August 1949 and provisions of section 6 of the Prevention of Corruption Act, 1947. The position simply is that whereas no sanction is necessary under section 197 of the Criminal Procedure Code for prosecutionunder sections161 etc of Indian Penal Code, sanction is necessary under section 6 of the Prevention of Corruption Act, 1947. This position has been clearly brought to the notice of the Home Department in the draft letter to Government of India supplied to that Department under this office U.O. No. 11404, dated the 12th October 1949 to which attention of R.D. is invited.

Sd/-P.N.Lad

17-4

O.C. Remembrancer of Legal Affairs.

U.O. to R.D.No. 5084, dated the 16th April 1952.

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Prevention of Corruption Act, 1947.

Sanction to Prosecution.

It is clear from the facts reported by the District Magistrate, Dharwar in his letter at page 1 that accused No. 1, Shri M.B.Patil, officiated and actually held the office of Pat 1 on 24-10-1948 when the alleged offence was committed. He was, therefore, a public servant within the meaning of that e term as defined in section 21 of the Indian Penal Code, notwithstanding the legal defect in his right e to hold that post (see Explanation 2 to section 21). A sanction under section 6 to his prosecution for an offence under section 161, Indian Penal Code would, therefore, be necessary from the authority competent to remove him and there would be no objection to give the sanction as proposed. The preamble to the draft Government Resolution at page 3 which cites the Collector's letter may, however, be deleted as advised by the R.L.A. in his Circular No. 1484 dated the 21st December 1949. The sanction being under the Prevention of Corruption Act, 1947, the reference to section 420 may also be deleted from the sanction.

Sd/-I.M.Lal

8-5-52

.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 7354 , dated the 9th May 1952.

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The offence alleged is criminal breach of trust by a public servant (section 409 I.P.C.). The allegation is that the amount alleged to be temporarily misappropriated by Shri S.H.Godbole was drawn by him on an abstract contingent bill for a particular official purpose namely at expenditure on the malaria control scheme but was instead utilised by him for his own private purpose from 11-10-1952 to 27-10-1952. On these facts no sanction under section 197 Criminal Procedure Code is necessary ; because the offence complained of cannot be said to be done by him "while acting or purporting to act in the discharge of his official duty." The official capacity of Shri Godbole attached only to the entrustment of the money and did not enter into his subsequent act of misappropriation (Hori Ram Singh vs. Emp. A.I.R. 1939 P.C. 43 and Saleh Mehemed vs. Thareemal A.I.R. 1951 Simd 202).

2. However, since the offence falls under section 5(2) of the Prevention of Corruption Act, 1947 , it will have to be dealt with on that footing and sanction of the requisite authority under section 6 of that Act will be necessary.. A draft sanction order is enclosed herewith.

3. The papers of investigation have not been forwarded to the Legal Department. It is presumed that the L.S.G. & P.N.D. is satisfied that on the facts disclosed in investigation there is a good case for prosecution.

Sd/-P.N.Lal

17-12

O.C. Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.N.D., No. 1409/A-Confl., dated the 17th December 1952.

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